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May 2, 2021

Jonathan Drill, Esq.
Stickel, Koenig, Sullivan, and Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009

**Re: In the Matter of the Application of the Township of Clinton, County
of Hunterdon, Docket No. HNT-L-315-15
THIRD AMENDMENT TO THE SETTLEMENT AGREEMENT**

Dear Mr. Drill:

This letter memorializes the terms of a third amendment (the "third amendment") to the Settlement Agreement ("Agreement") reached between the Township of Clinton ("Township" or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this and earlier settlement agreements, a defendant in this proceeding. This third amendment to the Agreement, if and when approved by the court at a fairness hearing, will supersede the previous agreements dated December 12, 2017 (the "initial agreement") and February 5, 2018 (the "amended agreement") and previously approved by the Court, as to the terms specifically amended by this third amendment. This third amendment also fully incorporates and supersedes the second amendment to the Agreement dated June 15, 2020.

The primary difference between this third amendment and the Agreement is that the "LeCompte" project that was included as a durational adjustment site in the Agreement has been replaced with the "Ingerman" project and the "Grayrock" project as durational adjustment sites for the reasons further described in this third amendment. The remaining differences between the agreements flow from the replacement of the LeCompte site with the Ingerman and Grayrock sites and address sewer and water capacity issues. All other terms from both the initial agreement and the amended agreement not specifically modified by this third amendment will remain in full force and effect as previously approved by the Court.

The Township and FSHC have entered into this third amendment because the parties agree that it will result more quickly in additional affordable housing units being constructed in the Township of Clinton.

The Township and FSHC hereby agree to the following third amendment terms:

1. The Township's approach to addressing its Third Round obligation of 337 units as described in Paragraph 7, Paragraph 9, Paragraph 10, Paragraph 11, and Paragraph 13, of the Agreement is hereby amended for the purposes of identifying the new locations of the eighty-nine (89) affordable housing units that had been proposed for the LeCompte site in the Township's approved plan.
2. The Agreement identified Block 29 Lots 4, the LeCompte site, as the location of a 100% affordable housing development that would include 89 total family rental affordable housing units. The LeCompte site is removed from the plan in its entirety and the

provisions relating to the LeCompte site are amended as described in the following paragraphs.

3. The chart in Paragraph 7 of the Agreement is amended to remove the 89-unit LeCompte project and replace it with the "Ingerman" municipally sponsored mixed-income development, the "Grayrock" inclusionary development, and a 3 bedroom special needs project:
 - i. The Ingerman site located at Block 70 Lots 6 and 6.01, an 11.7-acre property with a physical address of 1726 and 1730 Route 31, Clinton Township, NJ which will contain a total of 144 units with a 55% set aside for affordable housing, which comes to 80 affordable units, including at least 11 very low income units as part of a total of 40 low income units, with very low income and low income units proportionally distributed across each bedroom size (the "Ingerman development"). The affordable and market rate units will be integrated within the same buildings. The Township has acquired sufficient sewer capacity to accommodate the 80 affordable housing units in the Ingerman development. It will sell 18,450 GPD of its capacity to Ingerman for the 80 affordable units at \$35 per gallon. The Township will sell 2,070 GPD of its capacity to Ingerman for its market rate units at \$65 per gallon. The parties acknowledge that Ingerman will need an additional 9,705 GPD for the remainder of its market rate units. As such, the Township requires a durational adjustment for the inclusion of this site in its fair share plan as to sewer. That said, the Township will use its best efforts to enable the purchase of 9,705 GPD by Ingerman from a private party. The Township anticipates that the purchase price of the additional sewer capacity from the private party will be for approximately \$65 per gallon. The Township also requires a durational adjustment as to water. The Township obtained a water capacity reservation from the Town of Clinton for the LeCompte site for 17,542 GPD of water and the Township will use its best efforts to have that water capacity reservation transferred to the Ingerman site. The Ingerman site needs an additional 6,863 GPD of water and the Township will use its best efforts to assist Ingerman in obtaining that additional water capacity from the Town of Clinton. The Township will rezone the 11.7-acre site for the inclusionary affordable housing development prior to the joint amended fairness and compliance hearing to be held in this matter and will include the site in a proposed Highlands Center to the extent necessary.
 - ii. The Township will rezone Block 77.01, Lot 2 (.84 acres), Block 77.01, Lot 4 (.2 acres) and Block 77.01, Lot 3 (1.4 acres) (collectively, the "Grayrock site") for an inclusionary affordable housing development consisting of a total of 30 units on 2.44-acres, with a 20% set aside, which will yield 6 affordable units. The Township will rezone the 2.44-acre site for the inclusionary affordable housing development prior to the joint amended fairness and compliance hearing to be held in this matter. The 2.44-acre site will be a durational adjustment site by reason of a lack of sewer capacity and water capacity.
 - iii. The Township will fund three (3) municipally-sponsored special needs affordable housing bedrooms to be created in the Township on a site with access to water and sewer, with the location to be determined by

December 31, 2021 and the units to be funded and the information required by N.J.A.C. 5:93-5.5 to be provided by June 30, 2022.

- iv. As to the reference in the chart in paragraph 7 of the Agreement to the Headley site having first priority for sewer and water over all inclusionary sites, the developer of the Headley site has advised the Township that it plans to provide the site with on-site water and septic system so it no longer requires first priority over all inclusionary developments. The Ingerman site shall now have first priority for water and sewer over all inclusionary developments because: it will be providing a 55% set aside for affordable housing (which is far greater than the 20% set aside provided by the 108 Alton Place or Grayrock inclusionary developments); and it will be providing 80 affordable units which is far more affordable units than will be provided by the 108 Alton Place or Grayrock inclusionary developments (28 affordable units and 6 affordable units respectively).
- 4. Paragraph 9 of the Agreement is hereby amended such that any references to LeCompte and 89 affordable units shall be replaced with Ingerman and the 80 affordable units resulting from that site, the 2.44-acre Grayrock site and the 6 affordable units resulting from that site, and the 3 special needs affordable units that will be funded by the Township.
- 5. Paragraph 10 of the Agreement is replaced with the following amended Paragraph 10:
 - 10. The parties agree as follows:
 - a. It is anticipated that the developer of the Ingerman site will apply for Low Income Housing Tax Credits. In the event that the funding application for this site is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.
 - a. The Marookian development received a 9% Low Income Housing Tax Credit funds from New Jersey Housing and Mortgage Finance Agency in 2020 and the parties anticipate the beginning of construction soon. If for any reason despite that allocation the Marookian site is not under construction by November 30, 2021, as required by applicable law, the Township shall, no later than that date, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal

to or exceeding 10 units per acre net density; or using some combination of these approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

- b. The Township agrees to take all reasonable efforts to obtain water and sewer access for the Ingerman site as soon as possible. In the event for any reason that the Ingerman development does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but is not under construction by April 3, 2023, the Township shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using a combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Ingerman site.
- c. In the event that the Ingerman project does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but either does not have access to water or sewer utilities or is not under construction by April 3, 2023, and in the event the Township has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the Township would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.
- d. The Township and FSHC agree that it is essential that the Marookian and Ingerman developments include public amenities, including for persons with disabilities. The Township agrees that it will fund and/or obtain funding for a large public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian site to the site of the playground to allow pedestrian access. The Township further agrees to require the Ingerman development to include appropriate on-site playground facilities for a 144-unit family development. The Township further agrees to require the developers of the Marookian and Ingerman sites to provide a minimum of 20% of all units as barrier free

wheelchair accessible units. The Township further agrees to propose, fund, and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection from the Ingerman site along Route 31 to the intersection with Halstead Street and to fund and construct a cross-walk and connections from that cross-walk to both the Ingerman development and the walking path along Spruce Run Reservoir within one year of approval of the cross-walk by the NJDOT.

6. Paragraph 11 of the Agreement shall be amended in the following ways:
 - e. Ingerman shall replace LeCompte as having first priority for any available sewer and water service.
 - f. The basis for including the Ingerman site as a plan mechanism to satisfy a portion of the Township's Third Round obligation, which requires the support of a durational adjustment, is as follows:
 - a. It is likely that the acquisition of the LeCompte project land will require a taking which, while permitted pursuant to the Fair Housing Act, would jeopardize the Township's ability to meet the timelines in the current Agreement. The Ingerman project offers a much better opportunity to meet the requirements of the Agreement. In addition, the site offers a better location for future residents as there will be a walkable path to amenities such as the North Branch of the County library and the center of the Town of Clinton.
7. Paragraph 13 of the Agreement shall be amended to substitute 11 very low income family rental units at Ingerman and 1 very low income family rental unit at the Grayrock parcel for the 12 very low income units at LeCompte.
8. Within 45 days of the entry of an Order approving this Third Amended Settlement Agreement at a duly noticed Fairness Hearing, the Township shall pay to FSHC as a donation for the advancement of affordable housing in the amount of \$15,000 in addition to any sums previously provided.
9. No later than August 1, 2021, the Township shall amend its Housing Element and Fair Share Plan, zoning ordinance, Spending Plan, and provide all of the information required by N.J.A.C. 5:93-5.5 for the Ingerman and Grayrock sites to be consistent with the terms of this amendment. The parties agree to request the court schedule an amended fairness and final compliance hearing and make a good faith effort with appropriate notice no later than October 1, 2021.
10. All other terms of the February 5, 2018 amended settlement agreement between FSHC and the Township of Clinton that was approved by the court on April 3, 2018 shall remain in full force and effect. The parties agree that the terms of Paragraphs 26-37 of the February 5, 2018 amended settlement also apply to this amendment. Notices shall be provided as follows:

TO FSHC:

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510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182

E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

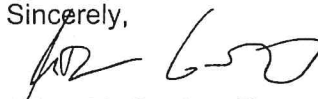
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Email: jdrill@sksdllaw.com

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833
Fax: (908) 735-8156
Email: cconner@clintontwpnj.com

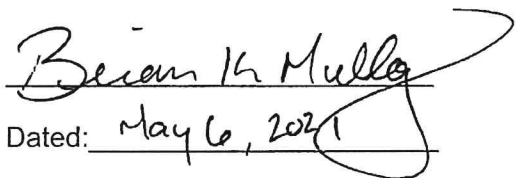
Please sign below if these terms are acceptable.

Sincerely,



Adam M. Gordon, Esq.
Counsel for Intervenor/Defendant
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization
of the governing body:



Dated: May 6, 2021

ATTEST:

